UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Lisa Renee Lattman,

Debtor.
_____/

Case No.: 17-45915
Chapter 7
Hon. Mark A. Randon

Suburban Mobility Authority for Regional Transportation ("SMART"),

Plaintiff,

v.

Lisa Renee Lattman,

Defendant.
_____/

Adversary Proceeding
Case No.: 17-04686

ORDER DENYING DEBTOR'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Before filing bankruptcy, Debtor sued Suburban Mobility Authority for Regional Transportation ("SMART"). Debtor claimed to have suffered neck, back, and shoulder injuries while aboard a SMART bus involved in an alleged "fender-bender" with a Volkswagen Beetle; SMART argued that Debtor did not–and could not have–suffered those injuries.

After Debtor rejected a six-figure case-evaluation award, the case proceeded to

trial.[1] The jury returned a verdict of "No Cause of Action." SMART then requested and received a $150,000.00 judgment against Debtor for its actual costs; it had collected $30,109.80 when Debtor filed Chapter 7 bankruptcy.

SMART seeks a determination that the debt is nondischargeable, because it arose from fraud. Debtor's motion for summary judgment is pending. Besides rehashing arguments that the Court has previously rejected, Debtor contends that the evaluation sanction was not "obtained by" fraud but, rather, from operation of the Michigan Court Rules. The Court heard argument on December 3, 2018, and requested additional briefing, which was completed on January 22, 2019.

Because: (1) the Court previously ruled that SMART's complaint was timely filed; (2) the Court did not revoke Debtor's discharge; (3) the state court did not have jurisdiction over Plaintiff's proceeding to determine the dischargeability of the debt; and (4) a question of fact exists as to whether Debtor received a financial benefit from SMART through her alleged fraud, Debtor's motion is **DENIED**. The case will proceed to trial.

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[1]In Michigan, a panel of three evaluators reviews each party's case and determines the likely outcome. The panel provides a dollar figure that it believes will settle the case. If a party does not agree to accept the evaluation, he or she faces the possibility of having to pay the other party's costs after trial. Danielle Hessell, *Michigan's Case Evaluation Rules: A Study in the Efficacy of Mandatory, Evaluative, and Narrow Alternative Dispute Resolution*, (2005), *available at* http://www.law.msu.edu/king/2005/2005_Hessell.pdf (last visited February 6, 2019).

II. STANDARD OF REVIEW

Under Rule 56 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, summary judgment must be granted "if the movant shows that there are no genuine issues as to any material fact in dispute and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *CareToLive v. Food & Drug Admin*., 631 F.3d 336, 340 (6th Cir. 2011). The standard for determining whether summary judgment is appropriate is whether "the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Pittman v. Cuyahoga Cnty. Dep't of Children Services*, 640 F.3d 716, 723 (6th Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)).

The Court must draw all reasonable inferences in favor of the party opposing the motion. *Pluck v. BP Oil Pipeline Co.*, 640 F.3d 671, 676 (6th Cir. 2011). However, the nonmoving party may not rely on mere allegations or denials, but must "cit[e] to particular parts of materials in the record" as establishing that one or more material facts are "genuinely disputed." Fed. R. Civ. P. 56(c)(1). A mere scintilla of evidence is insufficient; there must be evidence on which a jury could reasonably find for the non-movant. *Hirsch v. CSX Transp., Inc.*, 656 F.3d 359, 362 (6th Cir. 2011).

III. APPLICABLE LAW AND ANALYSIS

A. The Court Previously Ruled that SMART's Complaint was Timely Filed

Debtor first argues that SMART's complaint should be dismissed as untimely under Bankruptcy Rule 4004(a): "[i]n a chapter 7 case, a complaint, or a motion under §727(a)(8) or (a)(9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under §341(a)."

Rule 4004(a) does not apply in this adversary proceeding, because SMART is not challenging Debtor's discharge under section 727. Instead, Rule 4007(c) governs the time for filing a complaint under section 523(c).[2]

On December 8, 2017, the Court entered an Opinion and Order denying Debtor's motion to dismiss for untimeliness, finding extraordinary circumstances justified the application of equitable tolling.[3] Debtor's pending argument, therefore, improperly seeks reconsideration of that opinion.

Local Rule 9024-1(a)(1) provides that "[t]he deadline to file a motion for reconsideration of an order or judgment on the grounds that it was erroneous in fact or law is 14 days after the order or judgment." This time has long passed.

B. The Court did not use Section 105 to Sua Sponte Revoke Debtor's Discharge

Debtor next argues that the Court's December 8, 2017, Opinion and Order improperly used section 105 to revoke her discharge. The Court did no such thing.

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[2]Rule 4004(a) and Rule 4007(c) have the same 60-day deadline.

[3]The Court's Opinion and Order can be found at Docket Number 27.

Instead, its opinion specifically states, "[t]he Court allows SMART's complaint to proceed and will determine whether this debt, *only*, will be excepted from Debtor's discharge." (Emphasis in original). In other words, the trial will determine whether the specific debt owed to SMART will be excluded from the general discharge order; Debtor's discharge remains in place in all other respects.[4]

Further, section 105 allows the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). As explained in its previous opinion, the Court exercised its equitable powers under section 105(a) to allow SMART's complaint to proceed to trial–after determining that it was timely filed.

C. The State Court did not have Jurisdiction over SMART's Proceeding to Determine the Dischargeability of the Debt

Debtor also argues that because SMART did not litigate the fraud issues in the state court through a counterclaim, it is precluded from doing so here.[5] The Court disagrees. "Jurisdiction to determine the dischargeability of debts described by 11 U.S.C. § 523(a)(2) is exclusively within the bankruptcy courts, and no state court has jurisdiction to decide whether a fraud claim will be dischargeable in bankruptcy." *Sill v. Sweeney (In*

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[4]Debtor says that SMART cannot amend its complaint to add a section 727 count. SMART, however, is not seeking this relief.

[5]Debtor also says that the state-court judgment is not entitled to collateral estoppel or *res judicata* effect. However, SMART is not arguing that the judgment has preclusive effect.

re Sweeney), 276 B.R. 186, 195 (B.A.P. 6th Cir. 2002); *see also Archer v. Warner*, 538 U.S. 314, 321 (2003):

> Congress . . . intended to allow the relevant determination (whether a debt arises out of fraud) to take place in bankruptcy court, not to force it to occur earlier in state court at a time when nondischargeability concerns "are not directly in issue and neither party has a full incentive to litigate them."

(Quoting *Brown v. Felsen*, 442 U.S. 127, 134 (1979)).

Because the bankruptcy court has exclusive jurisdiction over proceedings to determine the dischargeability of debts, SMART's complaint is not barred for failure to raise the fraud issue in state court.

D. A Question of Fact Exists as to Whether Debtor Obtained a Financial Benefit under 11 U.S.C. § 523(a)(2)(A)

Under 11 U.S.C. § 523(a)(2)(A), "[a] discharge . . . does not discharge an individual debtor from any debt[] for money, property, services, or an extension, renewal, or refinancing of credit, *to the extent obtained by*[] false pretenses, a false representation, or actual fraud[.]" (Emphasis added).

According to the United States Supreme Court:

> "[T]o the extent obtained by" modifies "money, property, services, or . . . credit"–not "any debt"–so that the exception encompasses "any debt . . . for money, property, services, or . . . credit, to the extent [that the money, property, services, or . . . credit is] obtained by" fraud. The phrase thereby makes clear that the share of money, property, etc., that is obtained by fraud gives rise to a nondischargeable debt. Once it is established that specific money or property has been obtained by fraud, however, "any debt" arising therefrom is excepted from discharge.

Cohen v. De La Cruz, 523 U.S. 213, 218 (1998). This language suggests that section

523(a)(2)(A) actions first require the Court to determine that a debtor received money or property through fraud. However, circuits are split on this issue. *Compare e.g.*, *Nunnery v. Rountree (In re Rountree)*, 478 F.3d 215, 222-23 (4th Cir. 2007) (finding the plain language of the statute and the Supreme Court's interpretation of that language requires debtors to "obtain something through fraud for the exception to apply") *with Muegler v. Bening*, 413 F.3d 980, 983-84 (9th Cir. 2005) ("[i]t is only the fact of an adverse fraud judgment, and nothing more, that is required for a debt to be nondischargeable"). The Sixth Circuit has not decided the issue.

Debtor argues that SMART's section 523(a)(2)(A) cause of action cannot succeed as a matter of law, because: (1) it cannot prove that Debtor obtained any money, property, services, or an extension, renewal, or refinancing of credit; and (2) the debt SMART seeks to except from discharge resulted from the imposition of case evaluation sanctions based on a Michigan Court Rule.[6] Debtor says the debt was not based on fraud, because "the imposition of case evaluation sanctions is a function of law, and nothing the [Debtor] says or does to [SMART] would prevent the sanctions from being granted after the judgment of no cause of action is entered."

Assuming a financial benefit is required, the Court finds that SMART could satisfy its burden by showing that it directly or indirectly paid a total of $16,396.59 for Debtor's

[6]Michigan Court Rule 2.403(O) provides that "[i]f a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation."

medical expenses–as a result of Debtor's fraud–as SMART's papers indicate. *See Brady v. McAllister (In re Brady)*, 101 F.3d 1165, 1172 (6th Cir. 1996) (assuming that a section 523(a)(2)(A) cause of action must show the debtor directly or indirectly obtained a financial benefit). And, SMART's payment log shows that at least some of these expenses were paid after Debtor's allegedly fraudulent state-court lawsuit was filed.

In addition, to prevail at trial, SMART must prove Debtor had a subjective, fraudulent intent in bringing the state-court lawsuit. *See Rembert v. AT&T Universal Card Services, Inc. (In re Rembert)*, 141 F.3d 277, 281-82 (6th Cir. 1998) ("[w]hether a debtor possessed an intent to defraud a creditor within the scope of 523(a)(2)(A) is measured by a subjective standard [that] must be ascertained by the totality of the circumstances").

IV. CONCLUSION

For the above-stated reasons, Debtor's motion is **DENIED**; the case will proceed to trial on ***February 28, 2019, at 10:00 a.m***.

IT IS ORDERED.

Signed on February 06, 2019

/s/ Mark A. Randon

Mark A. Randon
United States Bankruptcy Judge